Supreme Court, U.S.
FILED

(1) 02 854 DEC 4 2002

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No. 02-

IN THE

Supreme Court of the United States

CLEMENTENE ARTIS-JAMES,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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36 pp

QUESTIONS PRESENTED

I. Where a plaintiff, as here, produces evidence disproving the employer's proffered reason for termination and a reasonable juror would infer discriminatory intent, did the D.C. Circuit Court, in granting summary judgment err by failing to follow this Court's decision in *Reeves v. Sanderson Plumbing Products, Inc.*, which requires summary judgment be denied?

II. Where the D.C. Circuit Court failed to give all reasonably inferences in favor of the movant, Ms. James, as required by this Court's unanimous opinion in *Reeves v. Sanderson Plumbing Products, Inc.*, did the D.C. Circuit Court err when it granted summary judgment?

III. In an employment discrimination case, where the respondent claimed it terminated Ms. James because she "failed to present required documentation" but Ms. James, a disabled senior teacher, submitted documentation showing superior qualifications, documentation exceeding that submitted by two less senior, non-disabled teachers, did the district court err in holding that Ms. James did not raise a jury issue of pretext?

IV. When Ms. James introduced evidence at summary judgment of subjective rating criteria, that was weighed against here known disabilities, selective "knowledge" of her employer that excluded her accomplishments but included the less substantial, less detailed accomplishments of her non-disabled coworkers, and a rating process that rated her superior accomplishments lower than those of junior non-disabled temporary teachers, did Ms. James, introduce evidence that, viewed favorably, required trial on her substantial claims?

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Appendix C — Order Of The United States District Court For The District Of Columbia Dated And Filed September 21, 2001 ..... 4a

Petitioner Clementene Artis-James respectfully prays that a writ of certiorari issue to review the judgment below.

General Introduction

The decision of the District Court of the District of Columbia Circuit granting summary judgment, and of the District of Columbia Court of Appeals summarily affirming that judgment when Ms. James introduced undisputed evidence establishing the falsity of her employer's reasons for her termination in this disability discrimination case and when Ms. James established issues of discriminatory intent for the jury, violated the relevant decision of this Court: *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).

As there is a split in the Circuits in applying *Reeves*, which should be the law of the land, between the D.C, 1st and 2nd Circuits and the 5th, 7th, 8th and 9th Circuits, issuance of a Writ of Certiorari is necessary to assure uniformity of interpretation on this issue of jury trial in discrimination cases, which is of nationwide importance.

The prevailing law of the ADA, Rehabilitation Act and Title VII requires a trial on her causes of action. The District Court erred in granting summary judgment. This error was harmful. Ms. Artis-James submitted sufficient facts to allow a reasonable juror to find pretext and to infer discrimination and retaliation against her by the defendant. Ms. Artis-James met her burden of submitting evidence that showed genuine issues as to material fact for the trier of fact. *See* Fed. R. Civ. P. 56(c).

Ms. Artis-James states the following in support of this petition for writ of certiorari:

OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit appears at Appendix B to this petition and is unpublished. The Court of Appeals denied rehearing, Appendix A.

The District Court granted summary judgment and dismissed Ms. Artis-James' complaint with prejudice, Appendix C.

The Court of Appeals ruled that summary judgment was proper because Ms. James failed to establish that her employer's "proffered explanation for discharging her" -- because she allegedly "failed to submit documentation required by a competitive level determination form" -- "was a pretext for discrimination." Appendix B.

STATEMENT OF JURISDICTION

The date on which the District of Columbia Court of Appeals summarily denied the appeal was July 8, 2002. A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: September 5, 2002, and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254(1) and 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V Of The Constitution Of The United States

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV Of The Constitution Of The United States

Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ADEA

The Americans with Disabilities Act of 1990, as amended (ADEA), 42 U.S.C. § 12101, *et seq.*

REEVES

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000).

STATEMENT OF THE CASE

1. Introduction and Essential Facts

Ms. James is a dedicated teacher, with outstanding ratings, who had 9 years experience at the Terrell Jr. High School before her discriminatory removal in 1996. James Declaration, Summary Judgment, Plaintiff's Exhibit 1. She has been an employee of the District of Columbia Public Schools since 1971.

Ms. James suffers from "post-polio syndrome" which is a disability within the meaning of the Americans with Disabilities Act as it affected a major life's activity, working. It affects her ability to walk stairs and engage in some physically active student activities. She walks with a noticeable limp.

On summary judgment, Ms. James' physician, Dr. Halstead, submitted an declaration that Ms. James suffered from:

> "[P]ost-polio syndrome characterized by progressive weakness in the legs (particularly of

> the right leg) and arms (particularly of the right arm), progressive, intense fatigue and muscle and joint pain." Dr. Halstead Declaration, Summary Judgment, Plaintiff's Exhibit 2.

Dr. Halstead has treated Ms. James' post-polio syndrome for 12 years. Summary Judgment, Dr. Halstead Declaration, Plaintiff's Exhibit 2.

Dr. Halstead testified that Ms. James' post-polio syndrome has required treatment including:

> ". . . rest periods throughout the day; and limitation of stair climbing and other strenuous activities." Dr. Halstead Declaration, Summary Judgment, Plaintiff's Exhibit 2.

In addition, Dr. Halstead testified he recommended that Ms. Artis should have:

> "all of her teaching activities limited to the first floor." Dr. Halstead Declaration, Summary Judgment, Plaintiff's Exhibit 2.

Ms. James corroborated that her disability affected her ability to climb stairs and particularly affected her ability to perform extracurricular activities such as

> "walking students to Dunbar High School, staying after school and engag[ing] in social functions such a extracurricular activities during and after school hours. . . ." James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 1.

Ms. James testified she could not perform these extracurricular activities because of her disability.

Though disabled, Ms. James was "Outstanding Teacher of the Year" there with students with rising test scores, involvement in many student clubs, and numerous awards.

As described in Ms. Artis' Opposition, Artis made her principal, Dr. Graves aware of her disability. James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 1. She and Graves clashed when Graves, in August 1995, reassigned Ms. James from a first floor to a second story classroom despite her post-polio syndrome that made it difficult for her to climb stairs.

As of September 1996, the start of the school year, teachers were evaluated according to a Competitive Level Documentation Form (CLDF), established by the District of Columbia Municipal Regulations and endorsed by the teachers' collective bargaining agreement. This CLDF established several objective measures for determining teacher performance, resulting in Ms. James for years being rated as "Outstanding" or "Very Good."

Graves then brought over at least two teachers from another school. Ms. Artis-James testified that these other teachers were not officially assigned to the Terrell Jr. High School. James Declaration, Plaintiff Opp. to Summary Judgment, Exhibit 1. Each came as "excess teachers," neither was assigned to the school as James was. James Decl. 3.

In May 1996, Graves announced that in 30 days he would implement his own system for evaluating teachers which would result in eliminating several teacher jobs, including one in Ms. James's subject.

Graves then requested each teacher to submit a Competitive Level Documentation Form, weighted according to his personal criteria. Instead of the normal established procedure, Graves scored the teachers according to a worksheet he created, not according to the CLDF.

Ms. James' submitted her form. Her Competitive Level Documentation Form accurately described in detail her many accomplishments:

> Student outcomes -- outstanding knowledge and rapport with students/clients, outstanding ability to communicat[e] with students, ten student recommendations to higher education Banneker, Duke Elllington, college, etc. 3 reference letters, ratings - very good, outstanding Teacher of the Year, Who's Who, Debating Club, special contributions, United Black Fund, Fraternal Order of Police, WSSU Alumni, PTM Volunteer Service, Great American Home award, Garden Club, 3rd Place Historical Society award, Student Essay award, notebook awards, Outstanding Service award, etc. City History fair, Columbia Heights Club, Century Club, National PTA. Exhibit E, Agency Motion for Summary Judgment. Statement of Undisputed facts, No. 17.

For these accomplishments, Graves gave Ms. James a rating of "0." James received no credit for her Outstanding Teacher, Teacher of the Year or school evaluations of performance, nor for any of her activities.

The other two teacher's Competitive Level Documentation Forms are attached to the Defendant's Motion for Summary

Judgment. Identical to Ms. James Form, neither has additional documentation attached. Exhibits "B" Ms. Williamson; "C" Ms. Wynn.

Williamson's Form contained the following description of "significant contributions:"

> Sponsors contest winners/participants Black History and National Womens History Month. Special contributions to the school - Field trip experience. Exhibit "B"; Motion for Summary Judgment.

For this abbreviated description (again with no supporting documentation in the record). Graves awarded Ms. Williamson a score of "15." Statement of Undisputed Facts, 26.

Wynn's Form contained an even briefer description of "significant contributions:"

> Special contributions to the school - field trips, Sponsors contest winners/participants. Exhibit "C"; Motion for Summary Judgment.

For this even more abbreviated description, Wynn received "10" points. Exhibit 10.

Graves' rating of the disabled James as "0" for her more detailed, substantial accomplishments assured she would be terminated. James received a score of only 52.5. However, her description was more detailed and weighty than either of the other tow teachers. If she had received over 15 points on that section (the top score given the other teachers) she would have

received more points overall then Ms. Wynn. Wynn, rather than Artis, therefore should have been "Riffed" -- terminated. *See* Point Totals on Statement of Undisputed Facts, paras. 25-27.

Yet these extracurricular activities James testified Graves knew she could not perform were the exact activities that Principal Graves stated he placed primary importance "priority" on -- rather than the academic student accomplishments in which Ms. James' students excelled -- and that led to disabled "teacher of the year" Ms. James' dismissal.

Unusually for a D.C. Principal, where chronically lagging academic achievement of District of Columbia students is of city-wide and nationwide concern, Principal Graves stated to Mr. James -- whose students excelled -- that:

> "[A]cademics were not a top priority with [me] even if the test scored of my students had improved that school year (1995-96). . . ." James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 1.

> "[S]ponsoring social clubs and social activities and walking students to Dunbar High School . . . was more important than academic achievements." James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 1.

Ms. James did turn in the competitive level form to Mr. Graves as he requested. James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 1.

Ms. James supplied the reason that she did not give Principal Graves documentation in addition to the form:

Graves tried at their conference to have her sign a (blank) competitive level form that was *not* the form that she had supplied to him. James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 2. Nor has any other teacher's "documentation" been placed in proof.

Principal Graves also unreasonably refused Ms. James repeated requests to see the criteria (worksheet) that Graves claimed he would use in the reduction in force program. James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 2.

Ms. James testified that Graves was "constantly aware of my performance in the class room and school . . ." James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 2.

Graves knew that James was unable to participate in extracurricular activities due to her disability which was aggravated by Graves' move of her to the second floor, as she testified she told him. James Decl. 1. Ms. James did submit to him a schedule on class closings, upon his request, which he called very professional. James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 2.

The disabled Ms. James was terminated from her 25 year career as an outstanding teacher effective July 15, 1996.

James filed a complaint claiming that she was terminated because of her disability. In her Complaint, James sought reinstatement to her position with back pay, as well as compensatory damages.

2. Procedural History

This case was briefed on Summary Judgment by the Defendant. After the District Court granted summary judgment for the Defendant, Ms. James appealed.

The Defendant filed a Motion for Summary Affirmance, which the Circuit granted on July 8, 2002. The petition for rehearing was denied.

3. The Court of Appeals Decision

The Circuit Court in the Order issued July 8, 2002 ruled that the District Court properly held that Ms. James failed to establish that her employer's proffered explanation for discharging her -- that is, because she failed to submit documentation required by a competitive level determination form -- was a pretext for disability discrimination. *See Aka v. Washington, Hosp. Ctr.*, 156 F.3d 1284, 1288-89 (D.C. Cir. 1998).

REASONS FOR GRANTING THE PETITION

I. *The Circuit Erred in Failing to Follow This Court's Precedent in Reeves v. Sanderson Plumbing Products, Inc.*

In *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000) this Court unanimously set the standard for denying summary judgment in discrimination cases.

However, the Court of Appeals in its 2001 decision, did not apply *Reeves*, instead applying earlier D.C. Circuit law of *Aka v. Wash. Hosp. Ctr., supra.*

This Court reversed the Circuit Court's grant of summary judgment and set Reeves' case for trial.

This Court unanimously held in *Reeves* that a plaintiff's *prima facie* case of discrimination combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, may be adequate to sustain a finding of liability. Where, as in *Reeves* and here, the plaintiff makes a substantial showing that the respondent's legitimate nondiscriminatory explanation is false, a trial should generally be granted, as the jury could infer discrimination. *Id.*

Reeves reaffirmed that a Court must draw all reasonable inferences in favor of the non-moving plaintiff. *Id.*

Under *Reeves*, the Circuit Court's grant of summary judgment against Ms. James must be reversed.

As in *Reeves*, Ms. James introduced evidence that the employer's explanation for her termination -- that she failed to submit documentation -- was false. The record was undisputed that Ms. James submitted as much documentation as any retained teacher, and in fact that her documentation was much more detailed and extensive and more fully supported her retention.

Despite this fact, Dr. Graves rated her lower and terminated her.

In addition, here, as in *Reeves*, Ms. James introduced some additional evidence that the decision maker, here Dr. Graves, was motivated by improper (disability-based) animus. Dr. Graves substituted a subjective system of

evaluation that more highly rated extracurricular activities (requiring walking) for a former academically based system. He had previously changed her classroom assignment to one requiring more walking which placed a burden on her.

Therefore, in this case the Circuit Court improperly failed to apply *Reeves v. Sanderson* and a writ of certiorari should be issued.

1. Split in Circuits

Since the *Reeves* decision a split has regrettably developed in the Circuit Courts with the D.C. Court of Appeals (in this *James* case) the 1st, and 2nd Circuits failing to follow *Reeves* and the 5th, 7th, 8th and 9th Circuit Courts following the *Reeves* decision.

See, e.g., Williams v. Raytheon, 220 F.3d 16 (1st Cir. 2000); *James v. N.Y. Racing Assn.*, 233 F.3d 149, 152-53 (2d Cir. 2000).

Cf. Blow v. City of San Antonio, 236 F.3d 293 (5th Cir. 2001) (based on evidence of falsity of employer's explanation, jury could infer racial animus; summary judgment reversed); *Bell v. EPA*, 232 F.3d 546, 550 (7th Cir. 2000) (evidence calling truthfulness of employer's claims precludes summary judgment; summary judgment reversed); *Adams v. Ameritech Services, Inc.*, 231 F.3d 414, 438 (7th Cir. 2000) (reversing summary judgment for ADEA RIF defendant; "*Reeves* was a cautionary note not to grant summary judgment too readily when facts are susceptible to two interpretations"); *Fisher v. Pharmacia & Upjohn*, 225 F.3d 915, 923 (8th Cir. 2000) (plaintiff presented sufficient evidence challenging the truth of employer's explanation;

summary judgment reversed); *Chuang v. Univ. Calif. Davis*, 225 F.3d 1115 (9th Cir. 2000) (plaintiff is required to produce "very little" evidence of employer's discriminatory intent to move past summary judgment; summary judgment reversed).

Such a situation in inherently unfair for plaintiffs unlucky enough to reside in the non-complying jurisdictions and undermines the rule of law and credibility of this Court.

This Court has a supervisory duty to ensure that its decisions are properly enforced. A uniform rule of law is of great importance.

In this case, the issue is of nationwide importance because of the volume of discrimination cases.

The principle underlying enforcement of anti-discrimination law -- here protecting those with disabilities -- must be applied uniformly, and in favor of a trial when sufficient evidence is introduced, to be meaningful in achieving justice.

II. The Circuit Court Erred in Failing to make all Reasonable Inferences in Favor of Ms. James in Establishing Pretext.

Here, the grant of summary justice against Ms. James must be reversed, as she presented sufficient evidence, when all inferences are made in her favor, as required.

The Circuit Court erred when it did not apply the correct standard on summary judgment. The plaintiff is not required to establish pretext at summary judgment phase, but simply to introduce evidence sufficient to raise an issue as to pretext.

In deciding whether to deny the summary judgment and allow the case to go to trial, the trial court was *required* to draw all reasonable inferences from the facts in favor of Ms. James. *Reeves, supra.*; *citing Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 255 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986).

The correct standard to deny summary judgment is whether any evidence was offered which, if believed, a reasonable jury could rely upon to find a pretext. Summary Judgment must be denied when the record, viewed in the light most favorable to the plaintiff, shows that a reasonable jury could find for her. *See Reeves*; *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248 (1986).

The burden an Agency must meet in attempting to persuade the Court to grant summary affirmance is even greater than the burden required to persuade the Court to grant affirmance of a trial court order granting summary judgment. *See Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987).

III. Where Ms. James, a disabled senior teacher, submitted documentation showing superior qualifications, documentation exceeding that submitted by two teachers who were retained, the District Court erred in holding that Ms. James did not raise a jury issue of pretext, where the respondent claimed it terminated Ms. James because she "failed to present required documentation."

The Court of Appeals for the District of Columbia Circuit Erred in Affirming Summary Judgment. The District Court was mistaken that failure to present supporting documentation can reasonably explain Ms. James -- a senior disabled teacher who earned the most outstanding teacher at the Terrell Jr. High School -- lower rating than two junior non-permanent non-disabled teachers.

The Circuit Court erred in overlooking evidence that the disabled Ms. James' accurately described higher accomplishments and submitted as much as much documentation as the other two alleged teachers, yet received lower evaluation in an entirely subjective process by a Principal with knowledge of her disability.

The employer's claim is that Ms. James did not submit required documentation. Yet, when the record is reviewed, the Court overlooked that there is undisputed proof that each of the teachers submitted the same documentation, with Ms. James, being the most detailed and extensive. Exhibits B, C, E; Motion for Summary Judgment.

In fact, a review of the Exhibits submitted into evidence shows that each other (non-disabled) Teacher, like the disabled James only submitted a cover sheet. Exhibits B

(Williamson), Exhibit C (Wynn). The Defendant submitted no evidence that either non-disabled teacher chosen over the disabled James submitted any other documentation.

The Defendant's argument fails because the evidence of record is that each of the three teachers presented a competitive level documentation form. Each competitive documentation form attached to Defendant's Motion has no other documentation attached. Exhibit B, Exhibit C, Exhibit E. There is no evidence of record that any other teacher presented as much documentation as James.

In fact, Graves gave James *no credit* -- rather than less credit -- for her the same or superior academic achievements.

The exhibits themselves rebut as pretext the Agency's proffered explanation that "failure to present documentation" was a reasonable explanation for the RIF. Given the failure of that explanation, given the background of Principal Graves' failure to accommodate Ms. James disability by moving her to the second floor, a reasonable jury could infer intent to discriminate.

Ms. James submitted sufficient evidence to allow a reasonable juror to infer that the District's proffered explanation for discharging her -- that is, because she allegedly failed to submit documentation allegedly required by a competitive level determination form -- was a pretext for discrimination.

Therefore, this Court must be mistaken that failure to produce documentation is a reasonable explanation or the only reasonable explanation for Principal Graves' RIF of Ms. James. The Court erred when it overlooked its duty to deny summary judgment when Ms. Artis did introduce this evidence.

IV. Viewed Favorably, Ms. James Introduced Sufficient "Other Evidence" of Discriminatory Intent to Merit Denial of Summary Judgment.

1. Subjective Rating Criteria

Dr. Graves' rating process was wholly based upon his subjective "personal knowledge" of each teacher's accomplishments.

Principal Graves, in his declaration claims that he gave Ms. James a "0" in the section entitled "Relevant Contributions, Accomplishments or Performance" because she had not provided any documentation as required in my May 28, 1996 memorandum and because I had no personal knowledge of her alleged contributions and accomplishments." Graves Declaration, p. 3, Attachment to Motion for Summary Judgment.

Note that for none of the teachers was the RIF decision based solely on documentation. In fact Graves' declaration always states that his decision was based on the Form, documents *and upon "personal knowledge*." Graves declaration, para. 14, Summary Judgment.

It is clear under *Reeves* that "pretext" and "discrimination" need not be proven at the summary judgment stage but can be inferred. Explanations relying heavily upon subjective considerations should be treated with caution. *Id.* Further, this Court in held that reliance upon subjective considerations could give rise to an inference of discrimination. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).

Subjective *ad hoc* criteria are viewed with "greater scrutiny than written criteria." *Howard v. BP Oil Co., Inc.*, 43 F.3d 520,

526 (11th Cir. 1994). Therefore, as there the grading was entirely subjective, based only on what Graves claimed to be his "personal knowledge" of each teachers' contributions. Such criteria provide additional evidence that a reasonable jury could rely upon in finding pretext for Ms. James' termination.

2. Selective Knowledge

The Court overlooked Graves' failure to have knowledge the disabled James was "outstanding teacher of the year" -- in light of James sworn testimony that he did have such knowledge -- while allegedly having knowledge of the two other non-disabled teacher's "field trips" and rating them more noteworthy -- could give a reasonable jury an opportunity to find pretext.

Ms. James' evidence challenged Graves' explanation, which arguably did not make common sense. He claims to have had "personal knowledge" of Ms. Wynn's "Field trips and sponsoring contest winners" and yet claims to have no personal knowledge of Ms. James' "outstanding Teacher of the Year award." The jury should have been entitled to weigh that contradiction in light of Ms. James' clear testimony in her declaration that Graves was "well aware" of her many academic accomplishments and even stated to her in their conference that he was considering "extra-curricular activities" more highly than her rising test scores for students. Artis Declaration, Plaintiff Exhibit 1, pp. 2-3.

A reasonable juror could find that Graves' explanation about documentation is not supported on this record and a D.C. Junior High School Principal's explanation that he had personal knowledge of two teacher's accomplishments and

not disabled Ms. Graves' -- who was "Teacher of the Year" while he was principal, and whose documentation was at least as detailed -- was pretext.

3. ***Intent***

Principal Graves stated to Mr. James--whose students excelled -- that:

> "[A]cademics were not a top priority with [me] even if the test scored of my students had improved that school year (1995-96). . . ." James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 1.

> "[S]ponsoring social clubs and social activities and walking students to Dunbar High School . . . . was more important than academic achievements." James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 1.

The jury was entitled to weigh the credibility of evaluating social studies teacher performance in the District of Columbia mainly on non-academic factors, when the disabled Ms. James presented evidence of superior academic credentials. Graves' statements, as a school principal or disinterest in academic achievement and interest mainly in activities unable to be performed by disabled teachers raised issues of discriminatory intent to discriminate against disabled teachers.

A reasonable jury could conclude that Graves' explanation that physically extra-curricular activities were more valuable that demonstrated academic achievements --

in which Ms. James's excelled -- in a public school to be pretextual.

Graves' explanation is suspect and arguably pretextual. Graves gave the disabled senior James a "0" for six detailed lines of accomplishments including numerous college bound students and "outstanding teacher of the year" while giving two new non-disabled teachers "10" and "15" for two or three line accomplishments.

Had the disabled James, who presented more detailed evidence of superior accomplishments, had been also rated -- comparably to non-disabled junior teachers at a "10" or "15" she, she would not have been terminated.

As additional proof of discriminatory intent, Ms. James testified that Principal Graves, instead of competing Ms. James against teachers, who, like her, were officially assigned to Terrell Junior High School, competed Ms. James against two teachers *not officially assigned* to Terrell Junior High School. James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 3. These were "excess teachers" from other schools. James Declaration, Summary Judgment, Plaintiff's Exhibit 1, p. 3. This raised a fact issue as to the intent to discriminate in the RIF process, since the RIF admittedly, was only to compete between teachers officially assigned to Terrell Junior High School Social Studies Department. Exhibit D, Motion for Summary Judgment.

Further evidence of discriminatory intent is Graves' departure, in 5/96 on 30 day's notice from the accepted evaluation process of many years to a subjective measure weighted toward activities disabled teachers like James could not easily perform. The Supreme Court has recognized that

an undisciplined system of subjective decision making can have precisely the same effect as a system pervaded by impermissible intentional discrimination. *Fort Worth Bank & Trust Co.*, 487 U.S. 977 (1988); *Turner v. Fouche*, 396 U.S. 346, 359-61 (1970).

A departure from internal procedures is a factor that the trier of fact may deem probative and choose to consider in determining the true motivation behind the employer's decision. *Johnson v. Lehman*, 679 F.2d. 918, 922 (D.C. Cir. 1982).

4. Summary

Ms. Artis-James, in opposing summary judgment, raised genuine issues of disputed facts that required a trial on her claims -- namely that Graves knew of her many accomplishments, yet intentionally failed to credit them by giving her, *the disabled Terrell Jr. High School's "outstanding Teacher of the Year"* a "0" for Significant contributions, Accomplishments or Performance -- while giving non-disabled teachers with one-third her Accomplishments "10" or "15" points on the ground that he knew more about their "activities." If Graves had graded Ms. James comparably to the non-disabled teachers, she would have been retained.

The Court was mistaken in failing to allow a reasonable jury to weigh Ms. James' credibility against Dr. Graves' on this issue.

CONCLUSION

Wherefore, premises considered, Ms. Artis-James respectfully requests this Court to grant this Petition and issue a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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